

(1975) 09 CAL CK 0017
In the Calcutta High Court
Case No : A.F.O.D. No. 439 of 1969

Premendu Bhusan Mondal

APPELLANT

Vs

Sripati Ranjan Chakravarty

RESPONDENT

Date of Decision : 02-09-1975

Acts Referred:

Limitation Act, 1963 — Article 65

Citation : AIR 1976 Cal 55 : (1978) 1 ILR (Cal) 528 : (1975) 2 ILR (Cal) 414

Hon'ble Judges : Ram Krishna Sharma, J; Murari Mohan Dutt, J

Bench : Division Bench

Advocate : Hrishikesh Ganguly, for the Appellant; Panchanan Pal and Jyotsna Das, for the Respondent

Final Decision : Allowed

Judgement

M.M. Dutt, J.—This appeal is at the instance of the plaintiff and it arises out of a suit for declaration of title, recovery of possession and mesne profits.

2. The disputed house belonged to one Hiru Sheikh. He died in 1948 leaving behind him his four sons and two daughters. The heirs of Hiru Sheikh, namely, Abdul Latif. Abdul Gani and others were living in the disputed house being premises No. 4. R.N. Chatterjee Lane. Baranagar. There was a communal riot in or about March, 1950, and they had to leave the disputed house and take shelter in village Badra, in the interior part of the district of 24-Parganas. Taking advantage of their absence, the defendant who is a refugee from East Pakistan, occupied the disputed house which was lying vacant. The plaintiff purchased the disputed house from Abdul Latif and others on May 29, 1964, by a registered sale deed. He mutated his name in the Municipal Register and paid taxes. The plaintiff requested the defendant to vacate the disputed house, but the defendant, though he assured the plaintiff that he would vacate the same, did not ultimately do so. In the circumstances, the plaintiff instituted the suit for the reliefs aforesaid.

3. The main defence of the defendant is that he has acquired title to the disputed house by adverse possession for a period of over twelve years. He came to the disputed house in March, 1950 and since then he has been in uninterrupted possession thereof. It is contended by him that the suit is barred by limitation and adverse possession.

4. The learned Subordinate Judge, 5th Court. Alipore, came to the finding that the defendant had acquired title to the disputed house by adverse possession. Upon the said finding, the learned Subordinate Judge dismissed the suit. Hence this appeal,

5. The only question that is involved in this appeal is, whether the defendant has acquired title to the disputed house by adverse possession. On the allegations made in the plaint, it is clear that Article 65 of the Limitation Act, 1963, applies to the case. The plaintiff has brought the suit for possession of the disputed house basing his claim on title and not on prior possession and dispossession. The period of limitation as prescribed by Article 65 is twelve years from the date when the possession of the defendant becomes adverse to the plaintiff. The learned Subordinate Judge has also held end, in our opinion, rightly that Article 65 applies. In the written statement, it is the positive case of the defendant and it is also his evidence that within 4 or 5 months of his coming into possession of the disputed house, he wanted to purchase the same. There is some negotiation in the matter, but as Abdul Gani, one of the sons of Hiru Sheikh proposed to get the deed of sale registered by false personation of some of the vendors who were then living in East Pakistan and unable to come to Calcutta for the purpose of registration, the defendant did not agree. It thus appears that the defendant admitted the title of the plaintiff's vendors after he came to occupy the disputed house. In our view, when a person in unauthorised occupation admits the title of the true owner his possession of the property will not be adverse to the true owner.

6. It is also the plaintiff's case that after his purchase of the disputed house he contacted the defendant several times and requested him to vacate the same, and before his purchase his vendors on some occasions contacted the defendant and demanded vacant possession from him. But each time the defendant assured them and the plaintiff that he would vacate the disputed house as soon as he would get alternative accommodation from the Government by way of rehabilitation. P. W. 3 Priyabrata Dasgupta who was the Secretary of the Refugee Committee and P. W. 4 Sushil Kumar Mukherjee have corroborated the plaintiff's case. The learned Subordinate Judge has not believed the evidence of P. W. 3, because he lent some money to the defendant. He has (sic) (not?) placed reliance on the evidence of P. W. 4 as he had intimacy with P. W. 1 Samsuddin, one of the sons of Hiru. In our opinion, on these grounds, the evidence of P. Ws. 3 and 4 cannot be rejected, P. W. 1 Samsuddin has stated in his evidence that when they came back from Badra they found the defendant in possession of the disputed house. He asked him to vacate the house in or about 1955/1956, but

the defendant told them to wait as he was a refugee and would get loan from the Rehabilitation Department. We do not also find any reason to disbelieve Samsuddin. It has been already stated, that when a person in unauthorised occupation admits the title of the true owner his possession of the property is not adverse to the true owner, but it should be deemed to be on his behalf.

7. The defendant, however, sought to prove adverse possession by certain facts. One Dhiren Chatterjee was the Chairman of the Baranagar Municipality. It is the evidence of the defendant that in January, 1951, Abdul Gani came and requested him to go to the house of Dhiren Chatterjee. Dhiren Chatterjee threatened the defendant and asked him to vacate, but he told Dhiren Chatterjee that he was in forcible occupation and would never vacate the disputed house. In the first instance, we are not prepared to believe the statement of the defendant, for according to D. W. 1 Hirendra Nath Chatterjee, who is the brother of Dhiren, his brother arranged vacant houses for refugees and the "para people" helped the defendant and his family to occupy the disputed house. D. Ws. 2 and 3 also categorically stated that Dhiren Babu arranged for the rehabilitation of refugees. In view of the said evidence of the witnesses examined on behalf of the defendant, it is difficult to believe that Dhiren Chatterjee would ask the defendant to vacate the disputed house. Secondly, there is no evidence that the said statement was made by the defendant to Dhiren Chatterjee in the presence of Abdul Gani or any of the vendors of the plaintiff. Even assuming that the defendant refused to vacate the disputed house when asked by Dhiren Chatterjee, that would be no evidence of adverse possession or assertion of hostile title against the plaintiff or his vendors. Dhiren Chatterjee had nothing to do with the disputed house nor was he an agent of the plaintiff's vendors. The defendant placed reliance on the fact of taking electric connection in the disputed house and payment by him of the Municipal tax. In our view, taking of electric connection or payment of Municipal tax does not go to prove adverse possession of the defendant. The house stood in the name of the plaintiff's vendors in the Municipal Register and after the purchase of the same, the plaintiff mutated his name. The defendant, therefore, paid taxes to the Municipality in the name of the plaintiff's vendors and, thereafter, in the name of the plaintiff. In any event, he was liable to pay occupiers' share of the tax. The recording of the defendant's name in the revisional record-of-rights as in forcible possession of the disputed house since 1356 B. S. corresponding to 1950 also does not help the defendant. There can be no doubt that there is a presumption of correctness of the entries in the record-of-rights, but that is liable to be rebutted on evidence. In 1950 the defendant admitted the title of the plaintiff's vendors and till the recording of his name in the revisional record-of-rights in 1955/ 56, there is nothing to show that he possessed the disputed house adversely to the owners.

8. One fact is significant to be noticed. The plaintiff's lawyer by his letter dated December 4, 1964, demanded possession of the disputed house from the defendant. The said letter was replied to by the defendant's lawyer by his letter dated December 17, 1964. In that letter, no hostile title was asserted on behalf

of the defendant in the disputed house. It was also not claimed in that letter that the defendant had been in possession of the disputed house in his own right. On the contrary, it was alleged that some manipulation, forgery and false personation had been made in regard to the execution of the deed of sale in favour of the plaintiff. It was requested that a full and comprehensive list of the vendors should be given to the defendant whereupon he would give a full and detailed reply. By this letter, the defendant impliedly admitted the title of the plaintiff's vendors, but it was alleged that the plaintiff got the sale deed executed by manipulation, forgery and false personation. In the next letter of the defendant's lawyer dated January 15, 1965, it was also alleged that the plaintiff's sale deed was tainted with forgery etc. A similar allegation has been made in the written statement. These allegations which have not been proved would, in our view, so against the defendant's case of adverse possession of the disputed house. By these allegations, it was sought to be contended by the defendant that as the plaintiff's sale deed was not genuine no title of his vendors in the disputed house passed to the plaintiff.

9. The vendors of the plaintiff made an application to the Sub-Divisional Officer, 24 Parganas for getting back possession of the disputed house from the defendant. In paragraph 12 of the written statement, the defendant has averred that his possession of the disputed house until alternative accommodation under the law, was confirmed by the S. D. O. and the Collector. This shows that the defendant had no animus to set up a claim of right in respect of the disputed house. He was a refugee from East Pakistan and he occupied the disputed house finding the same vacant, There is truth in the plaintiff's case that the defendant assured the vendors of the plaintiff that he would give up possession after he was given alternative accommodation by the Government. A squatter or trespasser, who does not set up a claim of right cannot plead adverse possession and no length of mere squatting possession is a good defence in a suit for possession by the true owner. See *Watson, v. The Government* 1865 CLR 182 at p. 196 (FB); *Suraj Nath Ahir and Others Vs. Prithinath Singh and Others*, ; *Moosan Aidravassu v. Mani* AIR 1957 TC 14. The learned Subordinate Judge seems to have been influenced by the facts that the defendant had been in the disputed house for more than twelve years and that he had taken electric connection and had been paying tax of the disputed house to the Municipality. Those facts, as stated above, do not at all support the defendant's case of adverse possession. In these circumstances, we are unable to uphold the judgment and decree of the learned Subordinate Judge dismissing the suit. In our view, the plaintiffs suit should have been decreed.

10. For the reasons aforesaid, the judgment and decree of the learned Subordinate Judge are set aside and the suit is decreed with cost. The plaintiffs title to the disputed house as described in the Schedule to the plaint, is declared. The defendant is directed to vacate and deliver vacant and peaceful possession of the disputed house to the plaintiff on or before February 29, 1976. In default, the plaintiff will be entitled to get vacant possession of the disputed house in

execution of the decree. The plaintiff will be entitled to mesne profits which will be ascertained by the Court below in accordance with the provision of Order 20, Rule 12, of the Code of Civil Procedure.

11. The appeal is allowed, but in view of the facts and circumstances of the case there will be no order for costs.

Sharma, J.

12. I agree.